

JAN 18 2013

S.B. NO. 374

A BILL FOR AN ACT

RELATING TO STATEWIDE BAN ON SELLING OR OFFERING TO SELL AQUATIC
LIFE FOR AQUARIUM PURPOSES.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

1 SECTION 1. Chapter 188, Hawaii Revised Statutes, is
2 amended by adding a new section to be appropriately designated
3 and to read as follows:

4 "§188- Selling of aquatic life for aquarium purposes
5 prohibited; penalties; fines. (a) It shall be unlawful for any
6 person at any time to knowingly or intentionally sell or offer
7 to sell, for aquarium purposes, aquatic life taken from any of
8 the waters within the jurisdiction of the State.

9 (b) This section shall not apply to a person exercising a
10 customary and traditional right for subsistence, cultural, or
11 religious purposes, subject to the right of the State to
12 regulate that right, including native Hawaiian gathering rights
13 and traditional cultural practices as authorized by law or as
14 permitted by the State pursuant to article XII, section 7, of
15 the Hawaii state constitution.



1 (c) This section shall not apply to the taking of aquatic
2 life for human consumption or for sale for human consumption,
3 including the use of bait.

4 (d) This section shall not prohibit special activity
5 permits allowed under section 187A-6; provided that the permit
6 issued is for bona fide scientific or public display purposes.

7 (e) Any person violating this section or any rule adopted
8 pursuant to this section shall be guilty of a misdemeanor and:

9 (1) For a first offense, shall be fined not more than
10 \$1,000 or thirty days' imprisonment, or both;

11 (2) For a second offense within five years of a previous
12 violation, shall be fined not more than \$2,000 or
13 sixty days' imprisonment, or both; and

14 (3) For a third or subsequent violation within five years
15 of a previous violation, shall be fined not more than
16 \$3,000 or ninety days' imprisonment, or both.

17 (f) In addition to any other penalty imposed under this
18 section, a person violating this section shall be subject to:

19 (1) An administrative fine of not more than \$1,000 for
20 each aquatic life specimen sold;



1 (2) Seizure and forfeiture of any taken aquatic life
2 specimens, commercial marine license, vessel, and
3 equipment; and

4 (3) Assessment of administrative fees and costs and
5 attorney's fees and costs.

6 (g) The division of aquatic resources of the department of
7 land and natural resources shall submit an annual report on the
8 effectiveness and enforcement of this section to the legislature
9 no later than twenty days prior to the convening of each regular
10 session.

11 (h) For purposes of this section:

12 "Aquarium purposes" has the same meaning as in section
13 188-31.

14 "Take" or "taking" means to fish for, catch, capture,
15 confine, or harvest, or to attempt to fish for, catch, capture,
16 confine, or harvest aquatic life."

17 SECTION 2. Section 188-31, Hawaii Revised Statutes, is
18 amended to read as follows:

19 "**§188-31 Permits to take aquatic life for aquarium**
20 **purposes.** (a) Except as prohibited by law, the department,
21 upon receipt of a written application, may issue an aquarium
22 fish permit, not longer than one year in duration, to take



1 aquatic life and to use fine meshed traps, or fine meshed nets
2 other than throw nets, for the taking of marine or freshwater
3 nongame fish and other aquatic life for aquarium purposes. No
4 person shall take aquatic life for aquarium purposes or use fine
5 meshed traps or fine meshed nets other than throw nets to take
6 marine or freshwater nongame fish and other aquatic life for
7 aquarium purposes without an aquarium fish permit.

8 (b) Except as prohibited by law, the permits shall be
9 issued only to persons who can satisfy the department that they
10 possess facilities to and can maintain fish and other aquatic
11 life alive and in reasonable health[-] and who can satisfy the
12 department that the methods of capture, husbandry, and transport
13 are humane and will not result in substantial injury to or death
14 of the taken aquatic life.

15 (c) It shall be illegal to sell or offer for sale any fish
16 and other aquatic life taken under an aquarium fish permit
17 [~~unless those fish and other aquatic life are sold alive for~~
18 ~~aquarium purposes~~].

19 The department may adopt rules pursuant to chapter 91 for
20 the purpose of this section.

21 (d) For the purposes of this section:



1 ~~[(1)]~~ "Aquarium purposes" means to hold salt water fish,
2 freshwater nongame fish, or other aquatic life alive in a state
3 of captivity as pets, for scientific study, ~~[or]~~ for public
4 exhibition or display, or for sale for these purposes; ~~[and]~~

5 ~~[(2)]~~ "Aquarium fish permit" means a permit issued by the
6 board for the taking of aquatic life and for the use of fine
7 mesh nets and traps to take salt water fish, freshwater nongame
8 fish, or other aquatic life for aquarium purposes~~[-]~~;

9 "Aquatic life" means any type or species of mammal, fish,
10 amphibian, reptile, mollusk, crustacean, arthropod,
11 invertebrate, coral, or other animal that inhabits the
12 freshwater or marine environment and includes any part, product,
13 egg, or offspring thereof; or freshwater or marine plants,
14 including seeds, roots, products, and other parts thereof; and

15 "Sell" means to transfer, prescribe, give, or deliver to
16 another; to leave, barter, or exchange with another; or to offer
17 or agree to do the same to another for consideration."

18 SECTION 3. Section 188F-4, Hawaii Revised Statutes, is
19 amended to read as follows:

20 "~~[(1)]~~**\$188F-4**~~[(2)]~~ **West Hawaii regional fishery management**
21 **area plan.** The department shall develop a West Hawaii regional



1 fishery management area plan that identifies and designates
2 appropriate areas of the management area as follows:

- 3 (1) Designates a minimum of thirty per cent of coastal
4 waters in the West Hawaii regional fishery management
5 area as fish replenishment areas [~~in which aquarium~~
6 ~~fish collection is prohibited~~];
- 7 (2) Establishes a day-use mooring buoy system along the
8 coastline of the West Hawaii regional fishery
9 management area and designates some high-use areas
10 where no anchoring is allowed;
- 11 (3) Establishes a portion of the fish replenishment areas
12 as fish reserves where no fishing of reef-dwelling
13 fish is allowed; and
- 14 (4) Designates areas where the use of gill nets as set
15 nets shall be prohibited."

16 SECTION 4. Section 189-11, Hawaii Revised Statutes, is
17 amended to read as follows:

18 "§189-11 Receipts in duplicate. Every commercial marine
19 dealer shall issue receipts to the person from whom marine life
20 is obtained and shall provide the following information in the
21 receipt:

- 22 (1) The date of the issuance;



1 (2) The name of the person to whom the receipt is issued;

2 (3) The following information with respect to each of the
3 varieties of marine life as the department shall
4 require including:

5 (A) The weight in pounds of each of the varieties
6 received;

7 (B) The numbers of marine life when they average a
8 pound or more; and

9 (C) The price per pound paid; and

10 ~~[(D) With regard to aquarium fish, regardless of~~
11 ~~weight, the number and species of the fishes,~~
12 ~~and]~~

13 (4) The signature of the dealer who issues the receipt.

14 Any dealer taking the dealer's own marine life or handling any
15 marine life taken by commercial marine licensees working for or
16 with the dealer, shall make out the same receipt, giving market
17 price for the marine life as prevails on the date of receipt. A
18 duplicate copy of this receipt shall be kept on file at the
19 premise where the marine life was sold by the dealer issuing the
20 same for a period of twelve months from the date of issuance,
21 and the duplicate copy shall be available for inspection upon



1 the demand of any conservation officer authorized to enforce the
2 laws of the State."

3 SECTION 5. Section 188-31.5, Hawaii Revised Statutes, is
4 repealed.

5 ~~["~~§188-31.5~~ Aquarium fish for export; monthly count.~~

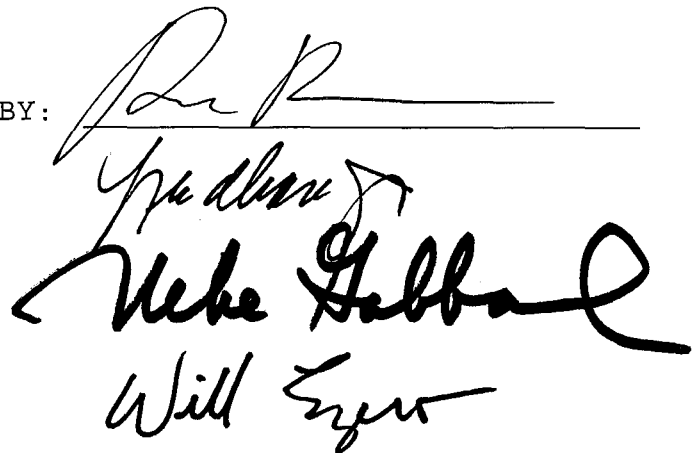
6 ~~The department of land and natural resources shall adopt rules~~
7 ~~in accordance with chapter 91 to monitor the aquarium fish catch~~
8 ~~report and fish dealer's report for export of aquarium fish~~
9 ~~taken from the waters of the State for aquarium purposes~~
10 ~~pursuant to section 188-31. A monthly count of the quantities~~
11 ~~taken of each individual species of aquarium fish exported shall~~
12 ~~be reported to the board."]~~

13 SECTION 6. Statutory material to be repealed is bracketed
14 and stricken. New statutory material is underscored.

15 SECTION 7. This Act shall take effect on January 1, 2014.

16

INTRODUCED BY:





S.B. NO. 374

Report Title:

Aquatic Life; Taking or Selling; Aquarium Permit

Description:

Establishes prohibitions, penalties, and fines for knowingly selling aquatic life for aquarium purposes taken from waters within the jurisdiction of the State. Requires an aquarium permit to take marine or freshwater nongame fish and other aquatic life for aquarium purposes. Imposes new standards for aquarium permit issuance determinations. Prohibits the sale or offering for sale of aquatic life taken under an aquarium fish permit, including for aquarium purposes.

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